National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED VISIT <u>www.nlrb.gov</u> FULL TEXT

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3-V, Inc. (11-CA-20894-1, 20895-1; 350 NLRB No. 24) Georgetown, SC July 5, 2007. The Board majority of Chairman Battista and Member Liebman reversed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing its employees' annual wage increases and by failing to pay its employees a semi-annual safety bonus. The Respondent informed its workforce in October 2004 that its access to a critical chemical compound, necessary for a substantial portion of its production, was substantially impaired. Due to this supply problem the Respondent announced that wage increases would not be given until the problem was resolved. The majority found that the Respondent effectuated a change in its established past practices prior to the Union's selection as representative of the Respondent's employees such that it was privileged to withhold the wage increase and safety bonus after the Union's certification. Thus, the Respondent had changed the status quo prior to the Union's election and the status quo no longer included an annual wage increase or safety bonus. Therefore, the Respondent did not violate the Act by failing to grant either the wage increase or the safety bonus in the summer of 2005. [HTML] [PDF]

In dissent Member Walsh would adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally discontinuing the annual wage increase and semi-annual safety bonus. Contrary to the majority Member Walsh would find that the Respondent did not depart from its established practice of conducting a wage survey and recommending a wage increase. Rather, the Respondent decided that the amount in that year would be zero. Accordingly, in Member Walsh's view, the Respondent's wage program remained a term and condition of employment at the time the employees selected union representation. By failing to maintain the fixed element of its wage increase program and failing to bargain over the discretionary aspect, the Respondent violated Section 8(a)(5) and (1). In addition, Member Walsh would find that the Respondent's failure to grant the safety bonus was a unilateral change to the employees' terms and conditions of employment.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers (USW); complaint alleged violation of 8(a)(1) and (5). Hearing at Georgetown, Feb. 22 and 23, 2006. Adm. Law Judge George Carson II issued his decision April 27, 2006.

PPG Industries, Inc. (25-RC-10347; 350 NLRB No. 25) Evansville, IN July 3, 2007. Contrary to the hearing officer's recommended finding, the Board concluded that the conduct of several Union supporters was sufficient to warrant setting aside the election held on June 28, 2006, which the Auto Workers (UAW) won by a 186-to-158 vote. The Board set aside the election and directed a second election. [HTML] [PDF]

During the critical election period, several Union supporters, including members of the employee-comprised voluntary organizing committee, made numerous statements threatening physical harm and property damage to those employees who stated they would, or would be inclined to, cross a picket line. Applying the standard for determining whether third party threats

are objectionable, the Board found that the recurring and pervasive nature of the serious threats throughout the critical period, combined with their application to the entire bargaining unit and dissemination to numerous employees, created a general atmosphere of fear and reprisal that warranted setting aside the election.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Engineered Steel Concepts, Inc. and ESC Group Limited, Alter Egos (Teamsters Local 142) East Chicago, IN July 3, 2007. 13-CA-43235; JD-44-07, Judge Eric M. Fine.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following case, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

First Student, Inc., Wallkill, NY, 3-RC-11749, July 2, 2007 (Members Liebman, Schaumber, and Kirsanow)
